United Nations A/67/764

General Assembly

Distr.: General
27 February 2013
English
Original: Spanish

Sixty-seventh session
Agenda items 69 (a) and 83

Promotion and protection of human rights: implementation of human rights instruments

The rule of law at the national and international levels

Letter dated 22 February 2013 from the Permanent Representative of Chile to the United Nations addressed to the Secretary-General

I write with reference to the letter dated 13 February 2013 from the Permanent Representative of the Plurinational State of Bolivia to the United Nations (A/67/743), with the aim of responding to the groundless and unjustified claims contained therein and shedding light on the truth of the facts relating to the illegal entry of Bolivian soldiers into Chilean territory, with a weapon of war, on Friday 25 January 2013.

The aforementioned letter contains elements that do not correspond to reality and makes incorrect judgments that oblige my Government to respond in such a way as to ensure that the Secretary-General has a full and accurate picture of the events that occurred and is aware of the manner in which the competent Chilean authorities have proceeded.

It is important to highlight that the illegal entry of at least three Bolivian soldiers on 25 January 2013, with a weapon of war, was expressly acknowledged by the Bolivian Ministry of Foreign Affairs in its note dated 14 February 2013, which offers an apology for this occurrence.

As for the facts, according to the notification received by Carabineros de Chile (the Chilean national police) on Friday 25 January 2013, an unspecified number of Bolivian soldiers entered Chilean territory, according to unconfirmed reports apparently pursuing individuals alleged to be involved in the smuggling of vehicles. Their entry into Chilean territory was not authorized, and they entered at an unauthorized crossing point, using weapons of war.

Having been alerted to the situation, a Carabineros de Chile patrol arrived on the scene and managed to detain three Bolivian soldiers, 2 kilometres from the border; the soldiers were found with an unmarked vehicle and carrying a weapon of war.

The detention of the three Bolivian soldiers was in full compliance with Chilean and international legislation. There is no treaty in force between Bolivia and Chile that authorizes soldiers to enter the country without prior notification, via an unauthorized crossing point, and carrying weapons of war.

As a result of the above, the three Bolivian soldiers are subject to judicial proceedings before the competent court for violation of the Arms Control Act, within the framework of the Chilean legal system. Any authorization to carry weapons of war that Bolivian soldiers may possess in their country is applicable exclusively in Bolivian territory and cannot be extended to the territory of third countries without their consent.

Furthermore, the Supreme Court of Chile, deciding on a habeas corpus application, confirmed on 12 February 2013 that the detention had been carried out in accordance with the law, thereby endorsing the action taken by Carabineros de Chile.

Moreover, the crossing of the border by agents of Bolivian State bodies, carrying weapons, without prior authorization, cannot be justified with the excuse that they were exercising powers deriving from the rules on international legal assistance in criminal matters that are binding on the two countries. In fact, it is clear from an analysis of the conventions mentioned in the letter that:

- The Convention on the Suppression of Smuggling, signed in La Paz on 23 November 1937, did not enter into force as the respective ratifications were not exchanged.
- The Inter-American Convention on Mutual Assistance in Criminal Matters, adopted in Nassau, Bahamas, on 23 May 1992, specifically indicates the "Procedures" covered by the assistance. They do not include those related to the events of 25 January 2013.
- The Agreement on Mutual Legal Assistance in Criminal Matters between the States parties of the Southern Common Market (MERCOSUR), the Republic of Bolivia and the Republic of Chile, adopted in Buenos Aires on 18 February 2002, does not include any rule to govern assistance in this case.
- The Agreement between the Republic of Chile and the Republic of Bolivia on Cooperation between Carabineros de Chile and the Bolivian National Police, signed in Santiago on 21 November 2008, specifically states that if movements of police personnel and vehicles into the territory of the other country are necessary, they must take place at authorized crossing points, with the sole purpose of travelling to the headquarters of the neighbouring police force closest to the international border, in order to hold meetings and talks. As stated in article 12 of the Agreement, such movements must not involve weapons of any kind. These requirements were not met in the present case.
- The United Nations Convention against Transnational Organized Crime of 2000 states that nothing entitles a State to undertake in the territory of another State the exercise of jurisdiction and performance of functions that are reserved exclusively for the authorities of that other State by its domestic law.

In short, none of the instruments for legal cooperation or assistance that are binding on Chile and Bolivia, whether bilateral or multilateral, provides for

members of the armed forces of one country to enter the territory of the other to perform police, military or other functions, without authorization.

Moreover, it should be noted that between 8 December 2012 and 31 January 2013, Carabineros de Chile detained 32 Bolivian nationals for smuggling in the Arica and Parinacota region and in the Tarapacá region (in the north of the country bordering Bolivia). Given that one of those individuals is directly linked to the events that took place on Friday 25 January 2013, it is unacceptable to attribute to Carabineros de Chile any intention to favour, protect, harbour or cooperate with suspected criminals linked to smuggling activities, as is implied by the letter from the Bolivian Permanent Representative. Furthermore, it is also incorrect to state that the vehicle allegedly seized by the Bolivian soldiers has been returned, since it is still impounded pending investigations to establish its origin and ownership.

To strengthen linkages in this regard, the Government of Chile has reiterated on numerous occasions the need to conclude the third evaluation meeting between the police institutions of Bolivia and Chile, which should have taken place in La Paz in December 2012 but was unexpectedly suspended by the Bolivian side.

Furthermore, the letter from Ambassador Llorentty refers to an alleged violation of the rules of the Vienna Convention on Consular Relations, which the Government of Chile must categorically refute. The Bolivian consular authorities were notified the same day, 25 January 2013, that the three Bolivian nationals had been detained:

- The highest authority of the Tarapacá region notified the Consul General of Bolivia in Iquique of the detention by telephone;
- The Chilean Minister for Foreign Affairs contacted his Bolivian counterpart the same day to inform him of the situation; and
- The Deputy Director General for Neighbouring Countries, Chilean Ministry of Foreign Affairs, arranged a meeting with the Consul General of Bolivia in Santiago to inform him and deliver an aide-memoire on the facts as known at that time.

The Consul General of Bolivia in Iquique made his first visit to the detainees on Saturday 26 January and made a number of subsequent visits, receiving at all times the necessary facilities.

In the aforementioned letter of 13 February, it is asserted that the Chilean courts, by exercising jurisdiction over the three members of the Bolivian armed forces, would be prejudicing the jurisdictional immunity of one State before the courts of another State.

This assertion is clearly false and has no grounds. Chile is not exercising any jurisdiction over the Bolivian State. The Chilean courts are exercising their jurisdiction over foreign individuals, who enjoy no immunity or privileges, exclusively in respect of acts related to Chilean territory, with the aim of establishing possible individual criminal responsibility.

The aforementioned letter also states that "in the region in question, the border between the two States is unmarked", suggesting that this would have allowed Bolivian soldiers to enter Chilean territory unintentionally. In that regard, it should be noted that 12 iron boundary posts marking the international border, which

follows clearly identifiable straight lines, have been erected in this area. The posts are sufficiently close together to allow the boundary line to be traced correctly.

The willingness of Chile to collaborate on border issues was clearly expressed in the agreement adopted in the Joint Commission on Boundaries, in Santa Cruz de la Sierra, Bolivia, in 2011, to undertake work to increase the number of boundary posts where necessary. To date, Bolivia has not responded to the invitations extended to it on this matter.

Lastly, given that the Permanent Representative of Bolivia has requested that his letter be included as a document of the General Assembly under agenda items 69 (a) and 83, I should be grateful if you would have the present letter of response added as a follow-up to the Bolivian letter, with the sole purpose of maintaining the communications in order, and without that in any way implying that Chile acknowledges the relevance of including the issue under the aforementioned agenda items. Similarly, I should be grateful if you would have this letter circulated to all Members of the United Nations as a document of the General Assembly.

(*Signed*) Octavio **Errázuriz**
Ambassador
Permanent Representative of Chile to the United Nations